SUPRON ENERGY CORP.

IBLA 78-164 Decided March 16, 1979

Appeal from decision of the Nevada State Office, Bureau of Land Management, denying reinstatement of geothermal lease N-10896.

Affirmed.

1. Geothermal Leases: Assignments or Transfers--Geothermal Leases: Reinstatement--Geothermal Leases: Termination

A geothermal lease which has authomatically terminated by operation of law for failure to submit the annual rental timely may be reinstated only where the lessee shows that the late payment of the rental was either justified or not due to a lack of reasonable diligence. The fact that an assignment application is pending does not justify a late payment of the rental either by the lessee or by the prospective assignee.

APPEARANCES: John V. A. Sharp, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Supron Energy Corp. has appealed from the December 12, 1977, decision of the Nevada State Office, Bureau of Land Management (BLM), which denied reinstatement of geothermal lease N-10896. When the lease rental was not paid on or before the anniversary date, September 1, 1977, the lease automatically terminated by operation of law pursuant to 30 U.S.C. § 1004(c) (1976).

At the time the lease terminated, Edward B. Towne, Jr., was the lessee of record. On June 23, 1977, an application for approval of an assignment of the lease was field, naming Supron as the assignee.

However, the assignment had not been approved by the anniversary date of the lease. 1/

[1] A noncompetitive geothermal lease which terminated by operation of law for failure to pay the annual rental on or before the due date may only be reinstated where it is shown that the failure to timely pay the lease rental was justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 1004(c) (1976). Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3244.2-2(b)(2). This regulation would normally preclude a finding of reasonable diligence in this case because the rental payment was not sent in advance of the due date. Thus, we must consider whether the lessee's failure to pay the rental timely was justifiable.

Appellant offers several reasons which it contends justify the late payment of the rental, but all of these reasons relate to the failure of the State Office to approve the assignment before the lease terminated. However, this argument provides no authority to withhold the effect of termination which automatically devolved upon the lease by operation of law and not by the action of any Government official when the rental was not timely paid. 2/ The pendency of the assignment application should not cause any confusion as to who is responsible for paying the lease rental timely; Departmental regulation 43 CFR 3241.5(a) makes it clear that the assignor remains responsible for payment until the assignment is approved. It therefore follows that the pendency of an assignment application cannot justify late payment of the rental, even if approval is delayed. Clarence and Marguerite Zuspann, supra.

Appellant contends that it did not receive a courtesy billing notice, but this is irrelevant because any notice would be sent to the lessee of record, not a prospective assignee. 3/ Appellant further

---

1/ BLM purported to approve the assignment on October 26, 1978. This action was improper because there was no existing lease to assign since the lease had terminated. Clarence and Marguerite Zuspann, 18 IBLA 1 (1974).

2/ Principles established in oil and gas lease reinstatement cases such as those cited in this decision are generally precedent for cases involving reinstatement of geothermal leases, because the standards of reasonable diligence and justifiable delay govern reinstatement of oil and gas leases as well as geothermal leases. Page T. Jenkins, 33 IBLA 135 (1977).

3/ This Board has never held that late payment of rental was justified because the lessee had not received a courtesy notice. See, e.g., Emma Pace, 35 IBLA 143 (1978); Richard C. Corbyn, 32 IBLA 296 (1977); Helena Silver Mines, Inc., 30 IBLA 262 (1977).

argues that prior approval of the assignment would have enabled it to set up its records for rental paying purposes so that the payment could be timely made. However, as the Board pointed out in response to a similar argument in Clarence and Marguerite Zuspann, supra at 5, appellant could have set up the record system while the assignment was pending. 4/

Therefore pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

_____
Joseph W. Goss
Administrative Judge

We concur:

_____
Joan B. Thompson
Administrative Judge

_____
Douglas E. Henriques
Administrative Judge

_____
4/ While the Department holds the lessee of record responsible for making the rental payment, payment from the assignee on behalf of the assignor may be accepted.